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No. 87-1515

In the Supreme Court of the United States

OCTOBER TERM, 1987

THE MAINE CENTRAL RAILROAD COMPANY, ET AL.,
PETITIONERS

v.

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES,
ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

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TABLE OF AUTHORITIES

Page

Cases:

Bradley v. *School Bd.*, 416 U.S. 696 (1974) 9

Brotherhood of Locomotive Firemen & Enginemen v. *Chicago, B. & Q.R.R.*, 225 F. Supp. 11 (D.D.C.), aff'd, 331 F.2d 1020 (D.C. Cir.), cert. denied, 337 U.S. 918 (1964) 5

Brotherhood of Locomotive Firemen & Enginemen v. *Chicago, R.I. & P.R.R.*, 393 U.S. 129 (1968) 6

Brotherhood of Railroad Trainmen v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969) 9

Burlington N.R.R. v. *Brotherhood of Maintenance of Way Employes*, No. 86-39 (Apr. 28, 1987) 3, 5, 9

Daniel v. *Family Security Life Ins. Co.*, 336 U.S. 220 (1949) 6

Fort Smith Light & Traction Co. v. *Board of Improvement*, 274 U.S. 387 (1927) 6

Hodel v. *Indiana*, 452 U.S. 314 (1981) 6

ICC v. *Railway Labor Ass'n*, 315 U.S. 373 (1942) 8

Louisville & N.R.R. v. *Bass*, 328 F. Supp. 732 (W.D. Ky. 1971) 5

Maine Central R.R. v. *Brotherhood of Maintenance of Way Employees*, 813 F.2d 484 (1st Cir. 1987), cert. denied, No. 86-1958 (Oct. 5, 1987) 2, 3, 4, 7, 9

New Orleans v. *Dukes*, 427 U.S. 297 (1976) 6

News America Publishing, Inc. v. *FCC*, No. 88-1037 (Mar. 29, 1988) 6

Nixon v. *Administrator*, 433 U.S. 425 (1977) 6

Pension Benefit Guaranty Corp. v. *R.A. Gray & Co.*, 467 U.S. 717 (1984) 7

Railway Employes' Dep't v. *Hanson*, 351 U.S. 225 (1956) 5

United States v. *Lowden*, 308 U.S. 225 (1939) 8

Usery v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976) .. 7

Virginian Ry. v. *System Federation No. 40, Ry. Employees*, 300 U.S. 515 (1937) 5

Williamson v. *Lee Optical, Inc.*, 348 U.S. 483 (1955) 6

Wilson v. *New*, 243 U.S. 332 (1917) 5

Constitution and statutes:	Page
U.S. Const.:	
Art. I, § 8, Cl. 3 (Commerce Clause)	3
Amend. I	6
Amend. V	2
Act of Aug. 21, 1986, Pub. L. No. 99-385, 100 Stat. 819	2
Act of Sept. 30, 1986, Pub. L. No. 99-431, 100 Stat. 987	1, 3
Railway Labor Act, 45 U.S.C. 151	2
45 U.S.C. 160	2

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Petitioners contend that the Act of Sept. 30, 1986, Pub. L. No. 99-431, 100 Stat. 987, which settled a railway labor dispute that had threatened a substantial disruption of interstate commerce, violates constitutional requirements of equal protection, due process, and separation of powers.

1. This case arises out of a railway labor dispute in 1986 between petitioners, Maine Central Railroad and its subsidiary Portland Terminal Company, and approximately 100 of its employees who were represented by respondent Brotherhood of Maintenance of Way Employees. "As a result of nationwide secondary striking," the dispute "snowballed to affect railroads across the nation" (Pet. App. A2). The President responded, pursuant to a determination by respondent National Mediation

Board, by creating an Emergency Board under the Railway Labor Act, 45 U.S.C. 160. The Board issued a recommendation for resolution of the dispute, but the recommendation was not accepted by petitioners, and the dispute continued when the cooling-off period that accompanied the creation of the Board ended in July 1986. Accordingly, after the parties had exhausted the dispute resolution procedures of the Railway Labor Act, 45 U.S.C. 151 *et seq.*, Congress, in the interest of protecting the free flow of interstate commerce, intervened in the dispute.

First, in August 1986, Congress enacted emergency legislation requiring the parties to maintain the status quo for an additional 60 days. Act of Aug. 21, 1986, Pub. L. No. 99-385, 100 Stat. 819. The law also created a congressional advisory board to keep Congress up to date on the dispute. Petitioners challenged this legislation on constitutional grounds, alleging violations of the equal-protection requirement of the Fifth Amendment and the doctrine of separation of powers. The court of appeals, affirming the district court, sustained the legislation. *Maine Central R.R.* v. *Brotherhood of Maintenance of Way Employees,* 813 F.2d 484 (1st Cir. 1987), cert. denied, No. 86-1958 (Oct. 5, 1987) (*Maine Central I*). The court held that (1) the small size of the class affected by the law did not warrant heightened equal-protection scrutiny, (2) the statutory classification was rationally related to the legitimate governmental goal of preventing disruptions of interstate commerce, and (3) the congressional enactment, consistent with separation-of-powers requirements, did not interfere with the constitutional authority of another branch (*id.* at 487-493). Petitioners filed a petition for a writ of certiorari to this Court, raising equal-protection and separation-of-powers arguments essentially identical

to those advanced in the present petition.[1] This Court denied the petition. No. 86-1958 (Oct. 5, 1987).

In September 1986, when the first statute's moratorium expired without the parties' having reached agreement, Congress, pursuant to the recommendation of the advisory board it had established, enacted new legislation that mandated a settlement of the labor dispute. Act of Sept. 30, 1986, Pub. L. No. 99-431, 100 Stat. 987. Congress expressly found that the labor dispute threatened essential transportation services and that the national interest, including the national health and defense, required the threatened services to be maintained (Pet. App. A12). Reciting its Commerce Clause authority to protect essential transportation services, Congress directed the parties to accept the Emergency Board's prior recommendations for settlement of the dispute (unless the parties otherwise agreed), to arbitrate any issues arising out of implementation of the settlement, and otherwise to preserve or restore the status quo as of the beginning of the strike. Pet. App. A13-A14. See generally *Burlington N.R.R.* v. *Brotherhood of Maintenance of Way Employes,* No. 86-39 (Apr. 28, 1987), slip op. 5-6.

Petitioners filed this action in district court alleging that the second statute violates constitutional requirements of equal protection, due process, and separation of powers. The district court sustained the statute (Pet. App. B1-B27), and the court of appeals affirmed (*id.* at

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[1] The petition presented the following questions for review: "(1) Whether an act of Congress that intentionally imposes unique, discriminatory burdens solely upon a single, designated individual violates the equal protection component of the fifth amendment? (2) Whether an act of Congress that adjudicates the rights of two private parties in a particular dispute violates the doctrine of separation of powers?" 86-1958 *Maine Central I* Pet. i.

A1-A12). The court of appeals rejected the equal protection claims, reasoning that the statute's narrow focus on the one railway labor dispute that threatened an imminent disruption of interstate commerce was rationally related to the legitimate governmental goal of preserving essential transportation services (*id.* at A4-A7).[2] The court next concluded that the terms of the settlement, particularly the requirement of "labor protection" payments to employees whose jobs petitioners abolished, were rationally related to settlement of the dispute and were therefore consistent with the requirements of due process (*id.* at A8-A9). Finally, the court held that the statute did not violate separation-of-powers requirements because Congress had neither intervened in a justiciable controversy nor resolved the dispute by applying and interpreting preexisting law (*id.* at A9-A10).[3]

2. The court of appeals' rejection of petitioners' equal-protection and due-process arguments is correct and does not conflict with any decision of any other court of appeals or district court. Further review is therefore unwarranted.

a. Congress has broad powers to protect interstate commerce from disruptive labor disputes. This Court has

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[2] Although Maine Central now contends that the small size of the statutory classification requires heightened equal-protection scrutiny (Pet. 9-15), it did not raise this argument in the court of appeals, recognizing that the First Circuit had rejected it in *Maine Central I* and that the court of appeals would be bound by that decision in this litigation. See Appellants C.A. Br. 18 n.4.

[3] In the court of appeals, Maine Central also challenged, under the non-delegation doctrine, the statutory provision (Pet. App. A13-A14) that requires respondent National Mediation Board to appoint an arbitrator to resolve disputed issues arising out of implementation of the settlement. The court of appeals rejected the challenge (*id.* at A10-A11), and Maine Central does not press the issue here.

stressed that "[i]ndustrial peace along the arteries of commerce is a legitimate objective; and Congress has great latitude in choosing the methods by which it is to be obtained." *Railway Employes' Dep't* v. *Hanson,* 351 U.S. 225, 233 (1956); accord, *Virginian Ry.* v. *System Federation No. 40, Ry. Employees,* 300 U.S. 515, 553 (1937). Congressional power in this area plainly encompasses the authority to legislate a settlement of a specific labor dispute that threatens commerce, and previous legislation mandating an end to particular controversies has accordingly been upheld against constitutional challenge. See *Wilson* v. *New,* 243 U.S. 332 (1917) (upholding a statute that settled a labor dispute by imposing wage and hour standards on a segment of the rail industry); *Louisville & N.R.R.* v. *Bass,* 328 F. Supp. 732 (W.D. Ky. 1971) (holding that a challenge to a statute imposing a settlement of a Railway Labor Act dispute does not present a substantial constitutional question); *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, B. & Q.R.R.,* 225 F. Supp. 11 (D.D.C.), aff'd, 331 F.2d 1020 (D.C. Cir.), cert. denied, 377 U.S. 918 (1964) (upholding a statute that created a special arbitration board to resolve a Railway Labor Act dispute). The legislation at issue here, which adopted the Emergency Board's recommendation, is a carefully limited measure intended to prevent an isolated labor dispute from effecting a substantial interruption of interstate commerce. As this Court, in ruling on the validity of secondary picketing arising out of this very labor dispute, stated in *Burlington N.R.R.,* slip op. 21-22, "[i]f the [Emergency] Board's recommendations are not initially accepted by the parties, Congress has the power to enforce the Board's recommendation by statute, as it has done here."

b. That Congress applied its power only to this dispute does not mean that it violated petitioner's equal-protection

rights. In the area of social and economic regulation, "legislation carries with it a presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality." *Hodel* v. *Indiana,* 452 U.S. 314, 331-332 (1981). Under this standard, equal protection is not denied by a regulatory scheme that only partially ameliorates a perceived evil and that leaves future problems, and perhaps a more complete and sweeping solution, for future regulation. *New Orleans* v. *Dukes,* 427 U.S. 297, 303 (1976); *Williamson* v. *Lee Optical, Inc.,* 348 U.S. 483, 489 (1955); see *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, R.I. & P.R.R.,* 393 U.S. 129, 142-143 (1968). Accordingly, the Court has upheld legislative classifications that apply to only one or two individuals or entities, as long as there is a rational basis for the distinction drawn. *Fort Smith Light & Traction Co.* v. *Board of Improvement,* 274 U.S. 387 (1927) (upholding a state statute that required a single railroad to pave streets occupied by its tracks); *Daniel* v. *Family Security Life Ins. Co.,* 336 U.S. 220, 225 n.5 (1949) (upholding a statute that regulated undertakers according to a classification that applied to only one business in the state); *Nixon* v. *Administrator,* 433 U.S. 425, 471 n.33 (1977) (upholding a statute that directed a government agency to take custody of and review presidential papers of former President Nixon); *New Orleans* v. *Dukes, supra* (upholding an economic regulation that conferred benefits on two specific street vendors).[4]

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[4] The District of Columbia Circuit recently invalidated a congressional enactment, reasoning that an equal-protection standard requiring something more than minimum rationality was warranted because the legislation singled out one individual, left untouched similarly situated parties, and burdened First Amendment rights of expression. *News America Publishing, Inc.* v. *FCC,* No. 88-1037 (Mar. 29, 1988). As there are no First Amendment implications in this case, the District

Congress in this case quite rationally limited its legislative action to the single labor dispute that it perceived to pose an imminent threat to interstate commerce. In *Maine Central I,* this Court declined to undertake further review of petitioners' essentially identical argument that legislation focusing on one railway-labor dispute is invalid under a heightened standard of equal-protection scrutiny. Petitioners' present equal-protection argument (Pet. 9-15) raises no new considerations, and the court of appeals' rejection of the argument, like its decision in *Maine Central I,* correctly applies established precedent of this Court.[5]

c. Petitioners' contention that the statute violates due process requirements (Pet. 15-17), because it imposes on them the obligation to make labor-protective payments for abolished positions that they were not contractually obliged to make when the jobs were abolished, is equally unavailing. The Court has made clear that legislation adjusting the burdens of economic life, even if retroactive in effect, is presumptively valid and may be overturned only if the law is proven to be arbitrary and irrational. *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717 (1984); *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976). Petitioners have not met that heavy burden in challenging the requirement of labor-protection payments.

The dispute that the challenged law settled arose in part out of demands for labor-protection payments. It was therefore entirely rational, as the court of appeals con-

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of Columbia Circuit's equal protection analysis, whatever its merits, is not in conflict with the First Circuit's holding below.

[5] Although petitioners point to a number of constitutional provisions (those concerning bills of attainder, ex post facto laws, takings, uniformity in bankruptcy laws, and impairments of contracts) that exhibit concern with "special legislation" (Pet. 12), petitioners do not assert claims under any of those provisions.

cluded (Pet. App. A8), for Congress to determine that some provisions for labor protection, along with the other provisions addressing other bargaining demands, were necessary to resolve the entire controversy. Moreover, the terms of the settlement were based on the recommendations of two impartial investigatory boards that had each conducted hearings on the matter (*id.* at A8). And the labor-protection provisions imposed on petitioners were comparable to their own bargaining proposal to award payments of $20,000 per employee; the only significant difference between that proposal and the Emergency Board's recommendation that was made binding by the statute is a $6,000 increase in the per-worker payment. See Pet. App. A3; C.A. App. 49a-51a, 58a. Such labor-protection payments, contrary to petitioners' suggestions (Pet. 5, 16), are far from unprecedented.[6] The dispute-settlement statute, accordingly, was a rational solution to the labor dispute and hence comported with due process requirements.

3. The court of appeals also correctly rejected petitioners' contention, which they renew in this Court (Pet. 17-19), that the statute encroaches on powers reserved to the judiciary. The statute did not purport to "adjudicate[]" the rights of the parties as a court would; rather, like legislation generally, it formulated new legal rules that adjusted the benefits and burdens of economic life. The nar-

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[6] This Court has noted that labor-protection payments can strengthen the national rail system through their effect on the stability and morale of railway workers. *United States* v. *Lowden*, 308 U.S. 225, 235-236 (1939); *ICC* v. *Railway Labor Ass'n*, 315 U.S. 373, 378 (1942). Moreover, the Emergency Board report on this dispute observed that petitioners and their affiliated lines have themselves previously entered into agreements affording protection payments to other employees. C.A. App. 45a-46a. Of course, petitioners made a proposal that included such payments in this very dispute.

row focus of such legislation could give rise to various challenges, but it does not render the legislation a usurpation of judicial power; nor would a separation-of-powers problem be presented even if, as is quite common, pending cases were affected by the new legal rules. See *Bradley* v. *School Bd.*, 416 U.S. 696, 711-716 (1974). In any event, the statute at issue in this case did not in any way interfere with the federal courts' functioning, if only because it did not affect any justiciable controversy. Here, as the court of appeals observed (Pet. App. A9), the parties had exhausted the dispute resolution procedures of the Railway Labor Act and had therefore reached a stage in their dispute at which there is *no* role for the courts: once the parties have reached that stage, their only resort is "to self-help in attempting to resolve their dispute, subject only to such restrictions as may follow from the invocation of an Emergency Board" (*Burlington N.*, slip op. 14). See *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 392 (1969). In sum, petitioners' separation-of-powers argument is no more meritorious, and no more deserving of further review, than it was when they presented the same contention to this Court in *Maine Central I*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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